IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION AND

IN ITS INHERENT JURISDICTION

WRIT PETITION NO. 1873 of 2002

ATV Projects India Ltd .. Petitioner

vs

Association of Engineering Workers & anr.. Respts

...

Mr P.K.Rele with Mr A.K.Jalisatgi for Petitioner

Mr Bhavesh Parmar for Respondent no. 1

CORAM : D.G. KARNIK, J

DATED : 15th June 2005.

ORAL JUDGEMENT:

1. By this petition the petitioner challenges the judgment and order dated 18th May, 2002 passed by the learned Member, Industrial Court, Mumbai in Complaint (ULP) No. 308 of 1985.

Background facts:

2. The dispute arises out of a complaint filed by the respondent no.1, a trade union of engineering workmen, that the petitioner was indulging in unfair labour practices alleged in the complaint. The petitioner is a company engaged in the business of turn key erection contracts of sugar plants and other engineering projects. The petitioner has two factorys' one at Mumbai and another at Mathura wherein parts of the machinery/ equipments are manufactured. The manufactured materials are then despatched on site where the petitioner has turn key contracts and there the machinary is assembled and installed. The nature of this work requires the petitioner to engage some workers in the factory and some at the various contract sites. The petitioner transfers its workers from the factories to sites from time to time and also engages some temporary workmen at the erection sites. In the year 1985, the petitioner had undertaken two turn key contracts at two places namely Parner in Maharashtra and Puranpur in Uttar Pradesh. The petitioner transferred 29 workers from its factory at Mumbai to Parner and

Puranpur in March/April 1985. The workmen refused to go on transfer and even to accept the transfer orders. The petitioner therefore sought to transfer another batch of 31 workmen from its Mumbai factory to the two sites at Parner and Puranpur. However, the second batch of workmen also refused to go on transfer and even to accept the transfer orders. The petitioner therefore initiated separate disciplinary proceedings against the said 60 workmen and terminated their services on disciplinary grounds. Their dismissals have been upheld in different proceedings by the labour court, and those orders have become final.

The dispute.

3. The present dispute relates to about over 23 workmen. Initially, the dispute related to 27 workmen but later on it was discovered that services of the 4 of them were terminated even prior to filing of the complaint and the present petition concerns only 23 workmen. On 16th May 1985, the respondent no. 1 filed a complaint under section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for

short MRTU and PULP Act) against the petitioner in the Industrial Court, Mumbai inter alia alleging that the petitioner company was indulging the unfair labour practises threatening the workmen who wanted to join the respondent no.1 union that they would be transferred out of Bombay or dismissed. It further alleged that the petitioner was preventing the 27 workmen from coming to work with effect from 4th May, 1985. This act of the petitioner in preventing the workmen to report for the work and not giving them any work amounted to an illegal lock out. It further alleged that since the company had not given the necessary notice of lock out under section 24 of the MRTU and PULP Act, the lockout was illegal. The respondent no.1 company had indulged in the unfair labour practice of declaring an illegal lockout. The petitioner resisted the complaint by filing a written statement traversing the allegations made in the complaint. The petitioner contended that there was no lock out. On account of the disciplinary action taken by the petitioner against the 29 and 31 employees who had refused to abide the orders of transfer, the workmen had indulged in damaging property of the company. The petitioner was not preventing the 23 workmen from coming to work but the

said workmen had voluntarily and on their own refrained from coming to work, on account of unrest caused by the transfer.

Previous Adjudications.

4. After hearing the parties, by a judgment and order dated 7th April 1995 the learned member of the Industrial Court allowed the complaint filed by the respondent no. 1 holding that the petitioner had indulged in the unfair labour practice as alleged. He directed the petitioner to assign and give work to all the 27 workmen. The petitioner thereafter filed a review application bearing ULP No.12 of 1995, alleging that certain facts which were relevant were not brought on record. It was alleged that services of the 4 out of 27 workmen had already been terminated but that was not brought on record resulting in an error in the order which was passed in respect of all the 27 workmen. It was further alleged that there were other patent errors too and therefore review was necessary. Respondent no. 1 opposed the review application contending that the Industrial Court had no power to review its own orders and also opposed the review application on

merits. By an order dated 5th July, 1995 learned member of the Industrial Court held that the review petition was maintainable and posted it for hearing. Thereafter the petitioner amended the written statement and contended that since 23 workmen had not been attending work their names were struck off the roll, they were no longer in the employment of the petitioner and therefore no orders could be passed by the Industrial court directing the petitioner to give them work. The respondent no. 1 also amended their complaint alleging that the striking of the names of 23 workmen by the petitioner amounted to their illegal dismissal and unfair labour practice under item 1 of schedule IV of the MRTU and PULP Act. After hearing the parties by an order dated 11th October 1996 the learned member of the Industrial Court reviewed set aside the earlier order dated 7th April, 1995 and directed that the original complaint No.308 of 1985 be reheard on merits. Parties were then allowed to lead additional evidence. After considering the original evidence as well as the additional evidence adduced by the parties and after hearing the parties the learned member of the Industrial Court dismissed the complaint. The Industrial Court held that the allegations of unfair

labour practice under item nos. 1,2,3,4 and 6 of the schedule II and item no. 9 and 10 of schedule IV were not proved. As regards the alleged unfair labour practice of alleged termination of the 23 workmen it held that it fell under item 1 of schedule IV of MRTP and PULP Act. It held that under section 5 and 7 of the MRTU & PULP Act, only the Labour Court and not the Industrial Court had the power and jurisdiction to enquire into the allegation of unfair labour practice under item 1 of Schedule IV. In view of these findings, the Industrial Court dismissed the complaint in toto.

5. The aggrieved respondent no.1 challenged the order dated 19th June,1998 of the Industrial Court by filing a Writ Petition bearing W.P. No.2472 of 1998 in this Court. This Court confirmed the findings of fact recorded by the Industrial Court on all issues except the issue no.2 relating to jurisdiction of the Industrial Court. As regards the allegations of illegal termination amounting to an unfair labour practice relying upon the earlier decision of a Division Bench of this Court in R.P.Savant vs Bajaj Auto Ltd reported in 2001 II CLR 982 wherein it was held that the complaint of illegal termination by

striking of the names from the roll could be entertained under item 9 of schedule IV of the MRTU and PULP Act, held that the Industrial Court had the jurisdiction to entertain and try the complaint. As the Industrial Court had dismissed the complaint regarding illegal termination only on the ground that it had no jurisdiction this Court remanded the matter back to the Industrial Court for deciding it afresh. After remand the Industrial Court reheard the complaint and by a judgment and order dated 18th May 2002 allowed the complaint and held that the petitioner had committed unfair labour practice under item nos. 1,4 and 6 of schedule II and item no.9 of schedule IV of MRTU and PULP Act. As regards termination of the 23 workmen it directed the petitioner to allow the 23 workmen to resume duties and pay their wages. That order is impugned by this petition.

Contentions of the petitioner.

6. Learned counsel for the petitioner submits that the impugned order is clearly erroneous in as much as the Industrial Court had transgressed its powers and exceeded the limits of its powers under

the order of remand. Learned counsel submits that by the order dated 6th November, 2001 passed in Writ Petition No.2472 of 1998 this Court had confirmed the findings of facts earlier recorded by the Industrial Court on all the issues except regarding the jurisdiction of the Industrial Court to enquire into the allegations of unfair labour practice of alleged termination of service by striking off the roll the names of the workmen. The Industrial Court was therefore entitled only to go into and decide the question whether the purported termination of the 23 workmen amounted to unfair labour practice. The Industrial Court however, could not have considered any other allegations of unfair labour practice as the matter was concluded by the judgment of this Court in the writ petition.

7. Learned counsel for the petitioner further submits that the Industrial Court could not have even considered the issue as to whether the termination of 23 workmen amounted to unfair labour practice because direction to consider it was given by this Court by its order passed in Writ Petition No.2472 of 1998 on the basis of the judgment of the Division Bench in R.P.Savant vs Bajaj Auto Ltd (supra) which was set

aside by the Supreme Court in Civil Appeal NO.4999 of 2002 (Bajaj Auto Ltd vs R.P.Savant reported in 2003 (99) FLR 985). He submits that in last para of the order the Supreme Court has observed: " The impugned judgment (i.e. the judgment of the Division Bench) would not be treated as a precedent either on fact or on law." He therefore submits that the order of remand passed by the Single Judge relying upon the judgment of the Division Bench was erroneous. Relying on the earlier judgment of a Single Judge of this court in A-2 (Ind) Premises Coop Society Ltd vs A.T.Utekar reported in 1997 (II) CLR 1033, the learned counsel contends that in respect of a complaint of alleged illegal termination of a workman only the Labour Court and not the Industrial Court, would have the jurisdiction to entertain and try the complaint in view of section 5 and 7 of the MRTU and PULP Act.

Effect of overruling of a judgement on the judgements and orders passed in other proceedings between different parties following the earlier judgement.

8. It is true that the judgment of the Division

Bench of this Court rendered in R.P.Savant vs Bajaj Auto Limited has been set aside by the Supreme Court. As the said judgment was set aside on account of the compromise between the parties it could have still been argued that the ratio of the decision of the Division Bench was still a good law and therefore the Supreme Court in the last para of its order clarified that the judgment of the Division Bench would not be treated as a precedent either on fact or on law. Therefore, hereinafter it would not be possible to rely upon the ratio of the judgment of the Division Bench in R.P.Savant vs Bajaj Auto Limited as a binding precedent. However, the orders which have been passed by this Court or by any other court relying upon the decision of this Court in R.P.Savant would be binding on the parties to any decision unless that decision is set aside on appeal or revision or in any other appropriate proceedings. It is well settled principle of law that an order of a court, even if erroneous, would bind the parties unless the order is set aside either in appeal or revision or in any other appropriate proceedings. If a party is aggrieved by an order of the Court, it must challenge the order in the superior forum in accordance with law. Even if a judgment in a case is

overruled by a superior court in collateral proceedings, (and not reversed on an appeal or revision), that judgement which determines the rights between the parties would be binding on the parties to the proceedings. The contention of Mr. Rele that order of remand was erroneous and had become erroneous on account of the decision of the Supreme Court in the collateral proceedings in Bajaj Ltd vs R.P.Savant (supra) has to be rejected. The order of remand, even if assumed to be erroneous, is binding on the subordinate court hearing the matter after the remand and also on the same court hearing an appeal from an order passed after the remand. The error if any, can only be corrected by a superior court hearing an appeal against the judgement or order.

9. Mr.Rele, however, is right in his submission that the Industrial Court has wrongly traversed beyond the order of remand. It would be useful to quote here the final part of order of this Court dated 6th November 2001 passed in Writ Petition No.2472 of 1998 which reads thus :

" In view of this factual matrix

vis-as-vis the legal position the only course available is to remand the matter to the Industrial court for adjudication of the issue relating to alleged termination of 23 workers of the petitioners, lest they should be forced to take lengthy recourse under the judgment of the Industrial court to the Labour court and file the fresh complaint. I may also make it clear that except for this issue, all other findings of facts recorded by the Industrial court are found to be based on evidence available on record and therefore need not be disturbed in any way whatsoever.

In the result, the impugned order dated 19.6.1998 dismissing the complaint is set aside only to the extent of Issue no.2 raised in the order of the Industrial Court holding that it has no jurisdiction to try the issue in respect of alleged illegal termination of 23 workers of the petitioner. For that purpose the matter is remanded to the Member, Industrial

> Court Mumbai for adjudication on the said issue which would be completed as expeditiously as possible and at any rate within six months from the date of this order. "
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> (underlining supplied)

10. A bare reading of the said order would show that this Court had confirmed the findings on all issues recorded by the Industrial Court except the finding on issue no. 2 which reads as under :

> " Whether the grievances made by the complainant about their alleged illegal termination falls under item no. 9 of schedule IV and whether the Industrial Court has jurisdiction to try such illegal termination. ? "

11. Normally, the question regarding the illegal termination of the workmen would fall under item 1 of schedule IV of MRTU and PULP Act. However, since the jurisdiction to adjudicate upon the alleged unfair labour practice under item 1 of schedule IV

of MRTU and PULP Act lies with the labour court and not with the Industrial Court, it was alleged by the respondent no. 1 that the alleged termination of 23 workmen amounts to unfair labour practise under item 9 of schedule IV for which the jurisdiction vests with the Industrial Court. The Industrial Court had initially held that the allegation would fall under item 1 of Schedule IV and therefore it would have no jurisdiction. However, in the Writ Petition No.2472 of 2001 the said decision was overturned and it was held that the Industrial Court had the jurisdiction to entertain and try the complaint and the matter was remanded back. The Industrial Court could only have investigated whether the alleged termination of 23 workmen by striking of their names from the roll amounted to unfair labour practice under item 9 of schedule IV of the MRTU & PULP Act. In view of order of remand specifically confirming all other issues and remanding the matter only for determination of the issue no.2 of the alleged termination of 23 workmen the Industrial Court ought to have restricted its adjudication to that issue. It could not have decided as to whether other acts mentioned in the complaint amounted to unfair labour practices either under schedule I or II of the MRTU

and PULP Act. The Industrial Court has traversed beyond the order of remand and has considered whether the other acts complained in the original complaint amounted to unfair labour practice.

12. Perusal of the judgment of the Industrial Court would also show that the learned member, Industrial Court has considered all the grievances in the complaint as a whole and whether the acts complained of cumulatively amounted to unfair labour practices. It is not possible to separate the reasoning of the learned Member on each of his findings which appear to be interdependent in the reasoning. Hence all the findings would have to be set aside and the matter would again be required to be remanded back to the Industrial Court for deciding whether the act of alleged termination of 23 workmen amounted to unfair labour practice under item 9 of Schedule IV of the Act. Needless to say that the Industrial Court would not be entitled to enquire into whether this act or any other acts of the petitioner amounted to unfair labour practice under any other count.

13. Learned counsel for the respondent no.1

invites my attention to the observations made in para 23 of the first order (before remand) of the Industrial Court dated 19th June, 1998. It is stated therein that the Industrial Court could not give its finding regarding the other issues as those issues were linked with the issue of the alleged illegal termination of the workmen for which it had no jurisdiction. He therefore submits that there was no decision on the issues numbers 4 to 7. In my view, these observations have to be read in the context in which they are made and along with the entire judgement and not in isolation. In the judgement the learned Member has discussed and traversed evidence relating to all the issues including 4 to 7. In para 17 of the judgment the learned Judge has specifically recorded his findings on issue nos. 4 to 7 in the negative. It was this answer to issue no. 4 to 7 in negative that was confirmed by this Court in the remand order. Therefore on remand the Industrial Curt was not entitled to reconsider issue nos. 4 to 7.

14. For these reasons, petition is allowed and the matter is remanded back to the Industrial Court for its decision afresh only the issue no.2 of the

original order.

15. Since the matter is old the Industrial Court is requested to decide the complaint as expeditiously as possible, and preferably within a period of six months from the receipt of the writ.

16. Rule is made absolute to this extent. Parties shall bear and pay their own costs.

D.G.KARNIK, J